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E-Filed: 2-11-11

10 **UNITED STATES BANKRUPTCY COURT
 11 FOR THE DISTRICT OF NEVADA**

12 In re:
 13 RIVIERA HOLDINGS CORPORATION
 14 Affects this Debtor.
 15 Affects all Debtors.
 16 Affects RIVIERA OPERATING CORPORATION
 17 Affects RIVIERA BLACK HAWK, INC.

Case No.: **10-22910-LBR**
Chapter 11 Jointly Administered with:

10-22913-LBR	Riviera Operating Corp.
10-22915-LBR	Riviera Black Hawk, Inc.

Date: March 17, 2011
 Time: 1:30 p.m.

18 **DEBTORS' FOURTH OMNIBUS OBJECTION TO CERTAIN UNLIQUIDATED
 19 PROOFS OF CLAIM FILED BY PERSONAL INJURY CLAIMANTS PURSUANT TO
 20 11 U.S.C. § 502 AND FED. R. BANKR. P. 3007(d)(5)**

21 Riviera Holdings Corporation, a Nevada corporation ("Riviera" or "RHC"), Riviera
 22 Operating Corporation, a Nevada corporation ("ROC"), and Riviera Black Hawk, Inc., a
 23 Colorado corporation ("RBH" and, together with the foregoing entities, the "Debtors"), the
 24 Debtors and Debtors-in-possession, by and through their attorneys, the law firm of Gordon
 25 Silver, hereby submit their Fourth Omnibus Objection To Certain Unliquidated Proofs Of Claim
 26 Filed By Personal Injury Claimants Pursuant To 11 U.S.C. § 502 And Fed. R. Bankr. P.
 27 3007(d)(5) (the "Objection") to the claims described herein (collectively, the "Claims") filed by
 28 the claimants identified herein (collectively, the "Claimants"). This Objection seeks to eliminate
 those proofs of claim (collectively, the "Proofs of Claim") that were filed by Claimants asserting

1 Claims related to alleged personal injuries: 1) in amounts that are unliquidated and for which
 2 each Claimant asserting each such Claim has failed to obtain relief from the automatic stay to
 3 liquidate his or her Claim; and 2) for which no legal or factual basis exists to support the Claims
 4 or their asserted amounts upon the Debtors' review of the Proofs of Claim and their Books and
 5 Records (defined below). **CLAIMANTS RECEIVING THIS OMNIBUS OBJECTION**
 6 **SHOULD LOCATE THEIR NAMES AND CLAIMS ON PAGE 4 OF THIS OMNIBUS**
 7 **OBJECTION BELOW.**

8 This Objection is made and based upon the memorandum of points and authorities which
 9 follow, the Declaration Of Phillip B. Simons In Support Of Debtors' Fourth Omnibus Objection
 10 To Certain Unliquidated Proofs Of Claim Filed By Personal Injury Claimants Pursuant To 11
 11 U.S.C. § 502 And Fed. R. Bankr. P. 3007(d)(5) (the "Simons Declaration") filed herewith, any
 12 pleadings, papers or other matters on file herein, judicial notice of which is hereby requested, and
 13 any oral argument of counsel to be presented at the time of the hearing on this Objection.

14 **POINTS AND AUTHORITIES**

15 **I.**
 16 **INTRODUCTION**

17 1. On July 12, 2010 (the "Petition Date"), the Debtors filed their voluntary petitions
 18 for relief under Chapter 11 of the Bankruptcy Code¹ thereby commencing the above-captioned
 19 bankruptcy cases (the "Chapter 11 Cases").

20 2. The Debtors continue to operate their businesses and manage their properties as
 21 debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy
 22 Code.

23 3. The Court established the bar date for filing proofs of claim as November 24,
 24 2010 (the "Bar Date").

25 4. The Official Committee of Unsecured Creditors was established on August 25,
 26 2010. See Docket No. 174.

27 1 All references to "Chapter" and "Section" herein are to title 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), all
 28 references to a "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure, and all references to a "Local
 Rule" are to the Local Rules of Bankruptcy Practice for the U.S. District Court for the District of Nevada.

5. On September 17, 2010, the Debtors filed their Second Amended Joint Plan Of Reorganization (the “Plan”) [Docket No. 257].²

6. On November 8, 2010, the Court held a hearing on confirmation of the Debtors' Plan and orally confirmed the Plan subject to various modifications by placing its findings of fact and conclusions of law on the record at the hearing.

7. On November 17, 2010, the Court entered its written order confirming the Plan (the “Confirmation Order”) [Docket No. 352].

II. BACKGROUND

8. The Debtors maintain books and records ("Books and Records") in the ordinary course of business. These Books and Records reflect, among other things, the Debtors' liabilities and the amounts thereof owed to their creditors.

9. The Debtors' claims register (the "Claims Register"), prepared and provided by the Debtors' claims agent, The Garden City Group, Inc., reflects that, as of the Bar Date, approximately 217 proofs of claim have been filed in these Chapter 11 Cases asserting claims against the Debtors. The Debtors and their advisors are comprehensively reviewing and reconciling all prepetition claims listed on the Debtors' schedules and the claims asserted in the proofs of claim (including any supporting documentation) filed in these Chapter 11 Cases. The Debtors are also comparing the claims asserted in the proofs of claim with their Books and Records to determine the validity of the asserted claims.

10. This reconciliation process includes identifying particular categories of claims that may be targeted for disallowance and expungement, reduction and allowance, or reclassification and allowance. To reduce the number of claims, and to avoid possible double recovery or otherwise improper recovery by claimants, the Debtors anticipate filing several omnibus objections to such categories of claims. This Objection is one such omnibus objection.

11. The Debtors have previously filed their First Omnibus Objection To Stock Ownership Claims Pursuant To 11 U.S.C. § 502 And Fed. R. Bankr. P. 3007(d)(7) (the “First

² All capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Plan.

1 Omnibus Objection”), their Second Omnibus Objection To Certain Unliquidated Proofs Of
2 Claim Filed By Personal Injury Claimants Pursuant To 11 U.S.C. § 502 And Fed. R. Bankr. P.
3 3007(d)(5) (the “Second Omnibus Objection”), and their Third Omnibus Objection To Stock
4 Ownership Claims Pursuant To 11 U.S.C. § 502 And Fed. R. Bankr. P. 3007(d)(7) (the “Third
5 Omnibus Objection”). Therefore, this Objection is the fourth omnibus objection to proofs of
6 claim the Debtors have filed in these Chapter 11 Cases.

III. REQUESTED RELIEF

8 12. Since the Petition Date, various Claimants filed Proofs of Claim alleging amounts
9 owed by certain Debtors based upon alleged personal injuries. For such Proofs of Claim, the
10 Claimants have asserted: 1) amounts that are unliquidated and for which the Claimants have
11 failed to obtain relief from the automatic stay to liquidate their Claims; and 2) Claims and Claim
12 amounts for which the Debtors have determined that there is an insufficient legal or factual basis.

Claimants receiving this Objection should locate their names and claims below, if any.

Claimant	Debtor Name	Claim No.	Date Filed	Claim Amount
Forehand, Rachel	Riviera Operating Corporation	56	9/3/10	\$195,000.00
Gutierrez, Mary	Riviera Operating Corporation	53	9/7/10	\$150,000.00
Light, James ³	Riviera Operating Corporation	32	8/18/10	\$1,650.00
Olivo, Rebecca	Riviera Operating Corporation	54	9/7/10	\$5,000.00
Preston, Rochelle ⁴	Riviera Holdings Corporation	12	8/9/10	\$1,000.00
Stevens-Wallace, Isis	Riviera Holdings Corporation	96	11/20/10	\$500,000.00
Stevens-Wallace, Isis	Riviera Operating Corporation	93	11/20/10	\$500,000.00
Stevens-Wallace, Isis	Riviera Black Hawk, Inc.	23	11/20/10	\$500,000.00

13. After carefully reviewing the Proofs of Claim, all supporting information and documentation provided therewith, and each of the relevant Debtors' Books and Records, the Debtors have determined that the Claimants have failed to establish the validity and amount of their Claims. Accordingly, the Debtors object to the Claims listed above and seek entry of an order substantially in the form attached hereto as Exhibit A (the "Order"), disallowing the

³ The Debtors' Books and Records reveal that Mr. Light's Claim was settled in September 2008 for \$2,401.50 and future accommodations.

⁴ The Debtors' Books and Records reveal that Ms. Preston's Claim was settled in February 2010 for \$249.00.

1 Claims in their entirety.⁵

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3 **IV.**
LEGAL ARGUMENT

4 **A. This Court Has Jurisdiction To Disallow Personal Injury Claims.**

5 This Court has the authority to disallow personal injury claims. The “core” jurisdiction
6 of the bankruptcy court includes the “allowance or disallowance of claims against the estate.”
7 See 28 U.S.C. § 157(b)(2)(B) (providing that “core” proceedings include “allowance or
8 disallowance of claims against the estate . . . but not the liquidation or estimation of contingent or
9 unliquidated personal injury tort . . . claims”); see e.g., In re G.I. Industries, Inc., 204 F.3d 1276,
10 1279-80 (9th Cir. 2000) (stating that “[t]he filing of a proof of claim is the prototypical situation
11 involving the ‘allowance or disallowance of claims against the estate,’ a core proceeding under
12 28 U.S.C. 157(b)(2).”). While bankruptcy courts are precluded from determining the liquidation
13 of personal injury tort claims, nothing divests the bankruptcy court of its “core” jurisdiction to
14 determine whether a legal basis exists for a claim. See 28 U.S.C. § 157(b)(2)(B), (O); see e.g., In
15 re Pacific Gas & Electric Co., 279 B.R. 561, 565 n.4 (N.D. Cal. 2002) (citing In re U.S. Lines,
16 Inc., 262 B.R. 223, 233 (S.D.N.Y. 2001) (a bankruptcy court may allow or disallow personal
17 injury claims as a matter of law)); see also In re Chateaugay Corp., 111 B.R. 67, 75 (Bankr.
18 S.D.N.Y. 1990) (holding that the bankruptcy court has jurisdiction to determine whether personal
19 injury claims meet certain thresholds for allowance). Simply put, this Court has the power to
20 disallow defective personal injury claims. See In re Standard Insulations, Inc., 138 B.R. 947,
21 955 (Bankr. W.D. Mo. 1992) (“[a]s a matter of judicial economy the bankruptcy court must have
22 authority to dispose of defective personal injury claims”).

23 By this Objection, the Debtors are not seeking to liquidate the Claims but rather seek to
24 have them disallowed because the Proofs of Claim fail to establish the amounts of the Claims,
25 and more importantly, they fail to establish that the Debtors are legally liable to the Claimants.

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28 ⁵ Pursuant to Local Rule 3007(a)(4), copies of the first pages of the Proofs of Claim are attached hereto as Exhibit
B.

1 **B. Standard For Disallowance Of Proofs Of Claim.**

2 Section 502(a) of the Bankruptcy Code provides that any proof of claim “is deemed
 3 allowed, unless a party in interest ... objects.” Ashford v. Consolidated Pioneer Mortg. (In re
 4 Consolidated Pioneer Mortg.), 178 B.R. 222, 225 (B.A.P. 9th Cir. 1995) (citing Whitney v.
 5 Dresser, 200 U.S. 532, 534-35 (1906)). Unlike a proof of claim, which must be filed before the
 6 bar date, an objection to a proof of claim may be filed at any time. In re Consolidated Pioneer
 7 Mortg., 178 B.R. at 225 (citing In re Thompson, 965 F.2d 1136, 1147 (1st Cir. 1992), In re
 8 Kolstad, 928 F.2d 171, 174 (5th Cir. 1991), cert. denied, 502 U.S. 958, 112 S.Ct. 419, 116
 9 L.Ed.2d 439 (1991)). Section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007 permit
 10 a party in interest to object to a filed proof of claim. An objection to a proof of claim initiates a
 11 contested matter and requires that a hearing be held. See 11 U.S.C. § 502(b); Fed. R. Bankr. P.
 12 3007(a); Local Rule 3007(c).

13 The Ninth Circuit Court of Appeals has described the shifting burdens of proof with
 14 respect to objections to proofs of claim:

15 Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest
 16 as to which proof is filed is “deemed allowed,” the burden of initially going
 17 forward with the evidence as to the validity and the amount of the claim is
 18 that of the objector to that claim. In short, the allegations of the proof of
 19 claim are taken as true. If those allegations set forth all the necessary facts
 20 to establish a claim and are not self-contradictory, they *prima facie* establish
 21 the claim. Should objection be taken, the objector is then called upon to
 22 produce evidence and show facts tending to defeat the claim by probative
 23 force equal to that of the allegations of the proofs of claim themselves. **But**
 24 **the ultimate burden of persuasion is always on the claimant.** Thus, it
 25 may be said that the proof of claim is some evidence as to its validity and
 26 amount. It is strong enough to carry over a mere formal objection without
 27 more.

28 Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King,
 29 COLLIER ON BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)) (footnotes omitted)
 30 (emphasis added). See also Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1040
 31 (9th Cir. 2000) (holding that the bankruptcy court correctly understood that the ultimate burden
 32 of persuasion was on the creditor); Spencer v. Pugh (In re Pugh), 157 B.R. 898, 901 (B.A.P. 9th
 33 Cir. 1993) (holding claimant bears ultimate burden of persuasion as to validity and amount of the
 34 claim by a preponderance of the evidence). If the objector produces sufficient evidence to negate

1 one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove
 2 the validity of the claim by a preponderance of the evidence. Lundell, 223 F.3d at 1039
 3 (citations omitted).

4 Bankruptcy Rule 3001(f) provides that a proof of claim executed and filed in accordance
 5 with the Bankruptcy Rules shall constitute *prima facie* evidence of the validity and amount of the
 6 claim. See Fed. R. Bankr. P. 3001(f). However, where a claimant fails to attach any written
 7 support to a proof of claim, the “claim is not entitled to be considered *prima facie* evidence of
 8 the claim’s validity.” In re Consolidated Pioneer Mortg., 178 B.R. at 226 (emphasis added).
 9 This is due to Bankruptcy Rule 3001(c)’s express requirement that “when a claim...is based on a
 10 writing, the original or a duplicate shall be filed with the proof of claim.” However, where such
 11 records may be voluminous, a claimant can comply with Bankruptcy Rule 3001 by submitting a
 12 detailed summary. See Heath v. American Express Travel Related Serv. Co., Inc. (In re Heath),
 13 331 B.R. 424, 432 (B.A.P. 9th Cir. 2005). Although there “is no uniform standard for what must
 14 be contained in such summary,” it is clear that, at the very minimum, there must be a
 15 “breakdown of interest and other charges.” See Id. Where the proof of claim omits an essential
 16 element of the substantive claim, the objector “need only note the absence of any such showing”
 17 and need not offer evidence in support. Atwood v. Chase Manhattan Mortgage Co. (In re
 18 Atwood, 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003).

19 In accordance with Section 502(b) of the Bankruptcy Code, the validity and amount of
 20 the claim shall be determined as of the date of the filing of the bankruptcy petition. Section
 21 502(b)(1) requires disallowance of a claim if “such claim is unenforceable against the debtor and
 22 property of the debtor, under any agreement or applicable law for a reason other than because
 23 such claim is contingent or unmatured. . .” 11 U.S.C. § 502(b)(1). The “applicable law”
 24 referenced in Section 502(b)(1) includes bankruptcy law as well as other federal and state laws.
 25 See Cavaliere v. Sapir, 208 B.R. 784, 786-787 (D. Conn. 1997) (providing that “applicable law”
 26 includes bankruptcy law). A debtor is therefore allowed to raise any federal or state law
 27 defenses to a claim. See In re G.I. Industries, Inc., 204 F.3d 1276, 1281 (9th Cir. 2000) (stating
 28 that a claim cannot be allowed under Section 502(b)(1) if it is unenforceable under

1 nonbankruptcy law); Johnson v. Righetti, 756 F.2d 738, 741 (9th Cir. 1985) (finding that the
 2 validity of the claim may be determined under state law); In re Eastview Estates II, 713 F.2d 443,
 3 447 (9th Cir. 1983) (applying California law).

4 **C. The Claims Are Properly Disallowed Because The Claimants Have Failed To Satisfy**
Their Burden Of Establishing *Prima Facie* Evidence Of The Validity And Amount
 5 **Of Their Claims.**

6 The above-listed Claims are based upon alleged personal injuries. The Proofs of Claim
 7 evidencing such Claims fail to establish liability against the Debtors through valid judgments or
 8 otherwise.⁶ Moreover, the Proofs of Claim assert either unliquidated/unknown amounts, or
 9 amounts that are not established through sufficient supporting evidence. Finally, none of the
 10 Claimants asserting the above-listed Claims has sought or been granted relief from the automatic
 11 stay imposed by Section 362(a) of the Bankruptcy Code, which relief would have enabled them
 12 to attempt to establish liability against the Debtors and otherwise liquidate their Claims.

13 Notwithstanding the Debtors' willingness throughout these Chapter 11 Cases to allow
 14 creditors to liquidate their claims, none of the Claimants herein has attempted to liquidate or
 15 otherwise support their Claims beyond providing the insufficient documentation that was
 16 initially filed with their Proofs of Claim. The Debtors' Plan has been confirmed, and the
 17 Claimants' failure to support or pursue their Claims is inexcusable at this juncture in these
 18 Chapter 11 Cases. Because the Proofs of Claim do not meet the standards of *prima facie*
 19 validity, and because the Claimants have otherwise failed to sufficiently establish the validity
 20 and amount of their Claims, each of the Claims should be disallowed in their entirety.

21 **D. The Standards Governing Omnibus Objections To Claims Have Been Met Through**
This Objection.

22 Bankruptcy Rules 3007(d)(5) and (e) govern this Objection to the Claims herein.
 23 Bankruptcy Rule 3007(d)(5) specifically allows for omnibus objections to claims if "they have
 24 been satisfied or released during the case in accordance with the Code, applicable rules, or a
 25 court order." Fed. R. Bankr. P. 3007(d)(5)

26 ⁶ The Debtors hereby deny any and all allegations stated or implied in the Proofs of Claim that attempt to establish
 27 liability against the Debtors. The Debtors further hereby assert all relevant affirmative defenses against such
 28 allegations.

1 Further, the requirements for omnibus objections are contained in Bankruptcy Rule
 2 3007(e), which provides that such objections shall:

3 (1) state in a conspicuous place that claimants receiving the objection
 4 should locate their names and claims in the objection; (2) list claimants
 5 alphabetically, provide a cross-reference to claim numbers, and, if
 6 appropriate, list claimants by category of claims; (3) state the grounds of the
 7 objection to each claim and provide a cross-reference to the pages in the
 8 omnibus objection pertinent to the stated grounds; (4) state in the title the
 9 identity of the objector and the grounds for the objections; (5) be numbered
 10 consecutively with other omnibus objections filed by the same objector; and
 11 (6) contain objections to no more than 100 claims.

12 Fed. R. Bankr. P. 3007(e).

13 This Objection falls within the grounds set forth in Bankruptcy Rule 3007(d)(5) as the
 14 Claims are properly disallowed as Disputed Claims pursuant to the Plan and Confirmation Order.
 15 See Plan, § 13.2(a). Indeed, as each of the Claims has been listed as disputed, contingent, and/or
 16 unliquidated in the Schedules, none of the Claims may be deemed an Allowed Claim entitled to
 17 payment. See id. at § 1.1.44. Thus, this Objection is unnecessary for the purpose of disallowing
 18 the Claims because they are already Disputed Claims that cannot receive a distribution under the
 19 Plan. However, the Debtors have filed this Objection out of abundance of caution and to obtain
 20 a final determination with respect to the Claims. Accordingly, and in light of the fact that all of
 21 the Claims herein are objected to on exactly the same grounds, the omnibus format of this
 22 Objection is authorized and appropriate. Finally, each of the requirements set forth in
 23 Bankruptcy Rule 3007(e) have been complied with upon the filing of this Objection. Therefore,
 24 the Objection should be sustained and all Claims listed on page 4 above should be disallowed.

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V. CONCLUSION

WHEREFORE, the Debtors object to the Claims as referenced herein and request that this Court enter an Order granting the relief requested above, disallowing such Claims in their entirety, and granting such other and additional relief as is just and proper.

DATED this 11th day of February, 2011.

GORDON SILVER

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